No. 79-1943

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA and T. EDWARD WHITE,

Appellants,

vs.

RAYBESTOS-MANHATTAN, INC. and RAYBESTOS-MANHATTAN, INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Appellees,

STATE OF NEW JERSEY,

Intervenor.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF APPELLEES

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Appeal Docketed June 19, 1980
Probable Jurisdiction Noted November 3, 1980

QUESTIONS PRESENTED

The Raybestos retirement plan is a private, defined benefit plan. In determining retirement income under this private plan, a deduction, or "offset", is made for any income amount the participant also is paid during retirement under the workers' compensation program.

1. Is this determination of private retirement income, which includes the workers' compensation deduction, prohibited by the minimum vesting standards of Section 203(a) of the Employee Retirement Income Security Act of 1974 (ERISA)?

2. Does ERISA preempt the 1977 New Jersey statute prohibiting this deduction for workers' compensation in determining private retirement income?

PARTIES TO THE PROCEEDING

The parties to the proceeding below are set forth at pages i-ii of Appellants' Brief to the Court.*

*Pursuant to Rule 28.1 of the Rules of the Court, the subsidiaries (except wholly-owned subsidiaries) and affiliates of appellee Raybestos-Manhattan, Inc. are: Manufacturas Multiples, S.A.; Daikin-R/M, Ltd.; and Itapsa, S.A. D.E. C.V. Raybestos-Manhattan, Inc. has no parent company.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT:	
I. Workers' Compensation Integration In Determining Private Retirement Income Does Not Violate The Minimum Vesting Standards of ERISA Section 203(a)	7
A. The Language Of The Statute Does Not Support Appellants' Claim Of Forfeiture Of A Right	9
B. Congress Did Not Change The Pre-ERISA Rules On Statutory Benefit Integration Which Approved Workers' Compensation Integration	16
C. Treasury Reg. §1.411(a)-4(a), Which Was Promulgated After ERISA, Approves Workers' Compensation Integration In Determining Private Retirement Income	29
D. The Decision Of The Sixth Circuit Ignores The Language Of The Statute And Its Antecedent History	32
II. New Jersey May Not Regulate The Terms And Conditions Of Private Retirement Plans Covered By ERISA	33
CONCLUSION	41
APPENDIX—TEXT OF STATUTES	1a
A. ERISA Section 203(a)	1a
B. ERISA Section 514	5a

Authorities Cited

PAGE

Cases:

Amory v. Boyden Associates, Inc.,
434 F. Supp. 671 (S.D.N.Y. 1976) 12

Bingler v. Johnson,
394 U.S. 741 (1969) 30

Blue Chip Stamps v. Manor Drug Stores,
421 U.S. 723 (1975) 34

Ford Motor Credit Co. v. Milhollin,
444 U.S. 555 (1980) 33

Helvering v. Winmill,
305 U.S. 79 (1938) 27, 30

Hewlett-Packard Co. v. Barnes,
425 F. Supp. 1294 (N.D. Cal. 1977), aff'd per curiam, 571 F.2d 502 (9th Cir. 1978), cert. denied,
439 U.S. 831 (1978) 36

International Brotherhood of Teamsters v. Daniel,
439 U.S. 551 (1979) 6, 31

Jones v. Rath Packing Co.,
430 U.S. 519 (1977) 34

Katz v. Township of Howell,
67 N.J. 51, 335 A.2d 14 (1975) 24

Nachman Corporation v. Pension Benefit Guaranty Corporation,
446 U.S. 359 (1980) 10, 12

National Carriers' Conference Comm. v. Heffernan,
454 F. Supp. 914 (D. Conn. 1978) 36

Parsons v. Granite City Steel Company,
41 Ill. App. 2d 396, 190 N.E.2d 644 (1963) 26

Authorities Cited

PAGE

Pollnow v. Commissioner of Internal Revenue, 35 T.C. 715 (1961) 28

Renshaw v. United States Pipe & Foundry Co., 30 N.J. 458, 153 A.2d 673 (1959) 26

Riley v. MEBA Pension Trust, 570 F.2d 406 (2d Cir. 1977), on remand, 452 F. Supp. 117 (S.D.N.Y. 1978), aff'd, 586 F.2d 968 (2d Cir. 1978) 12

United States v. Correll, 389 U.S. 299 (1967) 30

United States Railroad Retirement Board v. Fritz, 49 U.S.L.W. 4035 (December 9, 1980) 21

Utility Workers v. Consumers Power Company, No. 78-1402 (6th Cir. January 6, 1981), petition for rehearing en banc pending 9, 32-33

Wadsworth v. Whaland, 562 F.2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980 (1978) 35

Winer v. Edison Brothers Stores Pension Plan, 593 F.2d 307 (8th Cir. 1979) 12

Statutes:

Civil Service Retirement Act, 5 U.S.C. §8331, *et seq.* 21

Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829 (ERISA): ..... *passim*

Secs. 2-514, 29 U.S.C. §§1001-1144 8

Sec. 3(19), 29 U.S.C. §1002(19) 10-11

Sec. 3(22), 29 U.S.C. §1002(22) 11, 23

Authorities Cited

	PAGE
Statutes:	
Sec. 203(a), 29 U.S.C. §1053(a)	2, 4, 7-10, 16, 30, 32
Sec. 203(a)(2), 29 U.S.C. §1053(a)(2)	8
Sec. 203(a)(3), 29 U.S.C. §1053(a)(3)	3
Secs. 204(b)(1)(A), (B) and (C), 29 U.S.C. §§1054(b)(1)(A), (B) and (C)	12
Sec. 204(b)(1)(G), 29 U.S.C. §1054(b)(1)(G)	12
Sec. 205, 29 U.S.C. §1055	12
Sec. 206(b), 29 U.S.C. §1056(b)	5, 13-16, 26
Sec. 211(b)(2), 29 U.S.C. §1061(b)(2)	9
Sec. 514, 29 U.S.C. §1144	34-36
Sec. 514(a), 29 U.S.C. §1144(a)	6, 34, 40
Sec. 514(b)(2)(A), 29 U.S.C. §1144(b)(2)(A)	34
Sec. 514(b)(4), 29 U.S.C. §1144(b)(4)	34, 40
Sec. 514(c), 29 U.S.C. §1144(c)	35
Sec. 514(d), 29 U.S.C. §1144(d)	35
Secs. 1001-2008, 26 U.S.C. §401, *et seq.*	8
Sec. 1012(b)	18
Sec. 1016(a)(2)(B)	18
Sec. 1017(b)	9
Secs. 3001-04, 29 U.S.C. §§1201-04	30
Internal Revenue Code of 1954 (after amendment by ERISA), 26 U.S.C.:	

Authorities Cited

	PAGE
Statutes:	
Sec. 401(a)(5)	18, 27, 32-33
Sec. 401(a)(11)	12
Sec. 401(a)(15)	5, 13-16, 26
Sec. 411(a)	8-10, 16, 30, 32
Sec. 411(a)(3)	3
Secs. 411(b)(1)(A), (B) and (C)	12
Sec. 411(b)(1)(G)	12
Sec. 411(d)(3)	28
Sec. 7805(a)	30
Internal Revenue Code of 1954 (before amendment by ERISA), 26 U.S.C.:	
Sec. 401(a)	18-19
Sec. 401(a)(4)	25
Sec. 401(a)(5)	18-19, 28, 32-33
Sec. 401(a)(7)	28-29
Internal Revenue Code of 1939, 26 U.S.C.:	
Sec. 165(a)	19
Sec. 1500, *et seq.*	19
N.J. Stat. 34:15-7, *et seq.*	1-2
N.J. Stat. 34:15-29, as amended by Chapter 156 of New Jersey Laws of 1977	6, 33-34, 40

Authorities Cited

PAGE

Statutes:

N.J. Stat. 34:15-70, *et seq.* 1

Railroad Retirement Act of 1935, as amended by the Railroad Retirement Act of 1937, as amended by the Railroad Retirement Act of 1974, P.L. 93-445, 88 Stat. 1305, 45 U.S.C.:

Sec. 231, *et seq.* 21

Sec. 231a(a)(1) 21

Sec. 231a(h)(2) 23

Revenue Act of 1942, P.L. 753, 56 Stat. 798 19

Social Security Act, Title II, 42 U.S.C.:

Sec. 401, *et seq.* 21

Sec. 424a 24

Regulations:

Treasury Reg:

Sec. 1.401-1(b)(1)(i), 26 C.F.R. §1.401-1(b)(1)(i) 20

Sec. 1.401-6(a)(1), 1963-2 Cum. Bull. 165 28

Sec. 1.402(b)-1(a)(2)(i), 1956-2 Cum. Bull. 245 28

Sec. 1.411(a)-2(f), 26 C.F.R. §1.411(a)-2(f) 6

Sec. 1.411(a)-4(a), 26 C.F.R. §1.411(a)-4(a) 5-6, 29-30

Sec. 19.165(a)(4)-1 (1939 Code), 1943 Cum. Bull. 484 19

Revenue Rulings, IRS Publications:

IRS Pub. 778 (2-72) 25

Revenue Ruling 62-152, 1962-2 Cum. Bull. 126 22

Revenue Ruling 68-243, 1968-1 Cum. Bull. 157 ..... 24, 32

Revenue Ruling 69-421, 1969-2 Cum. Bull. 59 24

Authorities Cited

	PAGE
Legislative History:	
Conf. Rep. 93-1280, 93d Cong., 2d Sess. (1974)	8, 25-27, 30, 37
H. Con. Res. 609, 93d Cong., 2d Sess. (1974)	27
H.R. 2, 93d Cong., 2d Sess. (February 28, 1974)	36
H.R. 2, 93d Cong., 2d Sess. (March 4, 1974)	36
H.R. Rep. 93-807, 93d Cong., 2d Sess. (1974)	14, 17, 27, 30
H.R. Rep. 2333, 77th Cong., 1st Sess. (1942)	19
S. Rep. 93-127, 93d Cong., 1st Sess. (1973)	17
S. Rep. 93-383, 93d Cong., 1st Sess. (1973)	25
S. Rep. 93-1163, 93d Cong., 2d Sess. (1974)	21
S. Rep. 1631, 77th Cong., 2d Sess. (1942)	19
Statement of Representative Dent	38
Statement of Representative Perkins	7
Statement of Senator Javits	37
Statement of Senator Williams	27, 37
Supplemental Views of Hon. James C. Corman and Hon. Sam Gibbons on H.R. 12855 (1974)	26
Miscellaneous:	
Administration Recommendations to the House and Senate Conferees on H.R. 2 (1974)	36
Compendium on Workmen's Compensation, National Commission on State Workmen's Compensation Laws (Gov. Printing Office 1973)	23
ERISA Improvements Act of 1978 (S 3017), 124 Cong. Rec. S 6581 (May 1, 1978)	15

AUTHORITIES CITED

PAGE

MISCELLANEOUS:

ERISA Improvements Act of 1979 (S 209), 125 Cong. Rec. S 557 (January 24, 1979) 15

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Reorganization Plan No. 4 of 1978 30

Riesenfeld, Forty Years of American Workmen's Compensation, 35 Minn. L. Rev. 525 (1951) 24

Rule 28.1 of the Rules of Court ii

STATEMENT OF THE CASE

Appellee Raybestos-Manhattan, Inc. ("Raybestos") sponsors the appellee Raybestos-Manhattan, Inc. Employee Retirement Plan (the "Raybestos plan"), which is a private, employee benefit plan.

The appellants are former Raybestos employees who retired in 1972 or 1973. They are each eligible for the income benefits as determined under the terms of the Raybestos plan. (J.A. 15a-16a)

The Raybestos plan (which was arrived at through collective bargaining) integrates with income amounts paid during retirement under a workers' compensation program. That is, in determining benefits, the Raybestos plan requires a deduction equal to the amount of any income benefits the participant also is paid during retirement under a state workers' compensation program. (J.A.9a,13a,16a)[1] These amounts received under the workers' compensation program are also financed by Raybestos. N.J. Stat. 34:15-7, 34:15-70, *et seq.*

After being retired from Raybestos for four or more years, each appellant was found eligible for workers' com-

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1. Article VI, section 4(b) of the Raybestos plan, under which the retirement income of the appellants is determined, provides:

> All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income. (J.A. 16a)

Appellants, all of whom retired prior to 1974, assume that this provision is identical to the benefit formula which governs the calculation of income benefits for participants retiring on and after January 1, 1976 (see Appellants' Brief, 36 n.31). Although not material to the appellants, the benefit formula for post-ERISA retirees also includes a deduction for workers' compensation payments.

pensation payments under the New Jersey Workers' Compensation Law, N.J. Stat. 34:15-7, *et seq.* The determination of retirement income under the Raybestos plan therefore included a deduction of an amount equal to the income benefits paid concurrently under the workers' compensation program.[2]

A similar offset is included in determining retirement income under the private plan at issue in *Buczynski, et al. v. The General Motors Corporation,* No. 80-193, petition for certiorari granted November 3, 1980, with which this case has been consolidated by the Court.

Appellants in this case and petitioners in *Buczynski* ("petitioners") state that this prescribed deduction in determining private retirement income violates the minimum vesting standards set forth in ERISA Section 203(a), 29 U.S.C. §1053(a).

Their analysis is that: (*i*) under the minimum vesting standards of ERISA Section 203(a), upon satisfaction of certain age and service criteria, the right to normal retirement income under the plan is "nonforfeitable", *i.e.,* the right is established and may not be extinguished; (*ii*) work-

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2. The date and aggregate amount of the workers' compensation award for each appellant was: Joseph Alessi, November 30, 1977, $6,470; Raymond Buisson, October 20, 1977, $6,760; Stephen Michalski, November 9, 1977, $4,380; Charles Repka, August 8, 1977, $6,200; and T. Edward White, November 21, 1977, $6,170. (J.A. 17a)

The following deductions for those payments were made monthly under the benefit formula of the Raybestos plan: Joseph Alessi, $173; Raymond Buisson, $154; Stephen Michalski, $170; Charles Repka, $173; and T. Edward White, $158. (J.A. 17a)

Appellants wrongly imply that the Raybestos plan also deducts any medical expenses paid by Raybestos with these income benefits under the workers' compensation program (see Appellants' Brief, 35-36). Appellants also seek to color the case with certain assertions not part of the record (*e.g.,* appellants' ages at retirement from Raybestos) (see Appellants' Brief, 2-3).

ers' compensation integration, by lowering income benefits under the plan by an amount equal to income benefits also paid during retirement under the workers' compensation program, imposes a condition on their claim to retirement income, *i.e.*, without integration, the income determined under the plan would be greater; and (*iii*) because workers' compensation integration is not listed as an exception to the minimum vesting rules[3] and is not affirmatively authorized in ERISA, it is prohibited and can no longer be used as a factor in determining private retirement benefits.

Appellants and petitioners also assert that the New Jersey law which prohibits workers' compensation integration in determining private retirement income is not preempted by ERISA.

SUMMARY OF THE ARGUMENT

No law compels employers to establish private retirement plans. Employers are free to provide, or not to provide, retirement income for their employees. In agreeing to a retirement program, employers may decide what level of retirement income they will agree to finance, as well as how these income benefits will be determined.

One common method of determining income benefits under a private plan is in coordination with employer financed statutory income benefits. This is known as "integration".

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3. The exceptions to the minimum vesting rules are set forth in ERISA Section 203(a)(3), 29 U.S.C. §1053(a)(3), and the same exceptions are set forth for tax qualified plans in Section 411(a)(3) of the Internal Revenue Code of 1954 (IRC), 26 U.S.C. §411(a)(3). As we argue *post*, workers' compensation integration is not listed as an exception to the minimum vesting rules because statutory benefit integration, in determining the amount of plan income, is not regulated by the vesting rules in the first place. Integration only goes to the amount of the benefit.

The object of an integrated pension plan, whether it integrates with social security, railroad retirement, workers' compensation or similar statutory income benefits, is to assure to private plan participants a particular, defined, post-retirement level of income, all financed by the plan sponsor. Retirement income needs are balanced with employer costs. Whether the income benefits originate entirely from the plan fund, or are paid in tandem from the plan fund and these other employer financed income sources, the participant receives (and has an enforceable claim to) the defined income level during retirement.

The Raybestos and General Motors plans have for many years integrated private retirement income with any income amounts also paid to participants during retirement under the workers' compensation program. This, and only this, is the private retirement benefit agreed to be financed by the plan sponsor and historically it has been approved by the federal agency charged by Congress with administering the pension laws, both prior to and since the enactment of ERISA.

Two questions are presented:

1. Is this determination of private retirement income, which was decided upon by the parties, prohibited by the minimum vesting standards of ERISA Section 203(a)?

2. Is the New Jersey statute prohibiting this method of determining private retirement income preempted by ERISA?

(1)

The minimum vesting standards of ERISA do not prohibit, or address, permissible or impermissible statutory benefit integration in defining private retirement income.

The vesting standards only establish the time periods after which a participant's *claim* to pension is fixed. The

vesting standards do not regulate what the income amount from the plan will be or how the amount will be determined. In determining private retirement income benefits, integration with statutory income benefits also paid to the participant (and also financed by the plan sponsor) does not cause a forfeiture of the participant's claim. The claim to the employer financed, integrated benefit assured by the private plan is not forfeited or extinguished; only the amount determined and paid under the private plan is reduced, as agreed by the parties.

Statutory benefit integration in determining private retirement income is regulated by entirely separate provisions of ERISA, ERISA Section 206(b) and IRC Section 401(a)(15), and those separate provisions do not prohibit integration with income amounts also paid to participants during retirement under the workers' compensation program.

Prior to enacting ERISA, Congress carefully studied the existing private retirement system. Under ERISA, Congress added to that system the minimum rules and restrictions which experience had indicated were necessary. In considering the effect of ERISA on existing retirement plans, it is important to understand what Congress did not change. In its pre-ERISA Revenue Rulings and comprehensive Guides for Pension Plan Qualification, the Internal Revenue Service consistently permitted private plans to integrate with the workers' compensation program. Congress was familiar with the Internal Revenue Service's Revenue Rulings and Guides on statutory benefit integration and, although it had certain misgivings about benefit integration and stated that the matter merited further study, Congress determined to preserve those rules.

Finally, Treasury Reg. §1.411(a)-4(a), 26 C.F.R. §1.411(a)-4(a), which was promulgated shortly after the enactment of ERISA, approves integration with workers' compensation in determining private retirement income. It provides:

> [N]onforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits.

Treasury Reg. §1.411(a)-4(a) recognizes that there is no conflict in ERISA between statutory benefit integration in determining private plan benefits and the requirement that a participant's claim be nonforfeitable. That Regulation reasonably implements the statute and, therefore, must be sustained as valid.[4]

(2)

ERISA Section 514(a), 29 U.S.C. §1144(a), preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. Congress carefully formulated this preemption clause and intended federal preemption of state law to be as broad as this statutory language dictates. N.J. Stat. 34:15-29, as amended by Chapter 156 of the New Jersey Laws of 1977, prohibits private plans covered by ERISA from integrating private retirement income with income amounts also paid during retirement under the New Jersey workers' compensation program. Because this state statute invalidates the plan provision by which these private retirement benefits are determined, it is preempted by ERISA.

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4. If the Court invalidates this Treasury Regulation, however, and construes the vesting rules of ERISA as also regulating statutory benefit integration, those vesting rules would not apply in any event to individuals who were not "employees" on or after the 1976 effective date of ERISA Section 203(a). See General Motors' Brief and Reply Brief to the Third Circuit below, pages 9 n.3 and 14 n.18 respectively; Treasury Reg. §1.411(a)-2(f), 26 C.F.R. §1.411(a)-2(f); *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 569 (1979). In sustaining Treasury Reg. §1.411(a)-4(a), above, as valid, the Third Circuit did not reach or decide this issue.

ARGUMENT

I. WORKERS' COMPENSATION INTEGRATION IN DETERMINING PRIVATE RETIREMENT INCOME DOES NOT VIOLATE THE MINIMUM VESTING STANDARDS OF ERISA SECTION 203(a).

Following an exhaustive study of the private retirement system, Congress enacted the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829 (ERISA). While broad in scope, ERISA reflects a balance between the need to enact minimum rules and restrictions in areas acknowledged by Congress to be deficient, and the corresponding need to keep employer costs within reasonable limits.

Congress recognized that this is a voluntary system. In order to continue to stimulate growth in this voluntary system, Congress determined that it should impose only those particular new requirements which, after close study of cause, effect and cost, were considered necessary. As Representative Perkins stated during the consideration of ERISA:

> The subject of welfare and pension plans reform is a very complex and difficult one. . . . It has not been easy to draft a law which protects individual pension rights and at the same time, recognizes the voluntary nature of pension plans.
>
> Each regulation has to be weighed against the burdens and pressures it imposes on the system. Each requirement has to be weighed against the cost increase which might result.[5]

In response to a concern that vesting under existing plans was inadequate, Congress enacted the minimum

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5. Remarks of Representative Perkins, *reprinted in* II Legislative History of the Employee Retirement Income Security Act of 1974, Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 94th Cong., 2d Sess. (1976) ("Leg. Hist.") 3369.

vesting standards set forth in ERISA Section 203(a), 29 U.S.C. §1053(a), and IRC Section 411(a), 26 U.S.C. §411(a).[6]

Under the new vesting standards, private retirement plans must provide that an employee who reaches normal retirement age will be given a nonforfeitable right to his normal retirement benefit. ERISA Section 203(a), 29 U.S.C. §1053(a). This requirement was carried over from existing regulatory requirements for tax qualified plans.[7] Private retirement plans must now also provide under ERISA that an employee, at various stages of his employment career prior to retirement, will be given a nonforfeitable right to part or all of his accrued benefit. ERISA Section 203(a)(2), 29 U.S.C. §1053(a)(2). This permits portability of the participant's claim, rather than loss of that claim upon leaving employment prior to normal retirement age.

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6. The full text of ERISA Section 203(a) is set forth at pages 1a-5a of the Appendix to this Brief, *post*.

ERISA Section 203(a) is part of Title I of ERISA, Sections 2 through 514, 29 U.S.C. §§1001-1144, the so-called "labor provisions". IRC Section 411(a) is part of Title II of ERISA, Sections 1001 through 2008, which amends and supplements the provisions of the Internal Revenue Code covering qualifications of pension plans for favorable tax treatment.

Titles I and II of ERISA, the labor and tax provisions, contain identical minimum standards for participation, vesting and funding in private pension plans. However, the tax provisions contain certain additional restrictions for plans seeking "qualified" status which are not included in the labor provisions. For example, there is no requirement in the labor provisions that a plan not discriminate in favor of officers and highly paid employees. Therefore, a private plan which satisfies the requirements of the labor provisions might not "qualify" under the more restrictive provisions of the tax law.

7. "[A]ll plans would have to meet the requirement of present law that an employee must be 100 percent vested in his accrued benefit when he attains the normal or stated retirement age (or actually retires)." Conf. Rep. 93-1280, 93d Cong., 2d Sess., 268 (1974), III Leg. Hist. 4277, 4535.

Under the Raybestos and General Motors plans, workers' compensation integration is one of the agreed upon factors used to determine plan benefits. Appellants and petitioners argue to the Court that this workers' compensation integration now violates the vesting standards of ERISA Section 203(a). The Court of Appeals for the Sixth Circuit, in a 2 to 1 decision, recently agreed. *Utility Workers v. Consumers Power Company,* No. 78-1402 (January 6, 1981), *petition for rehearing en banc pending.*

However, such an application of the vesting rules ignores the language of the statute, as well as the existing pension framework within which the new minimum standards of ERISA were assimilated.

In its opinion below, the Court of Appeals for the Third Circuit carefully analyzed the argument that integration with income benefits under the workers' compensation program is now prohibited by the vesting standards and unanimously concluded that it was not. The Third Circuit considered the painstaking approach by Congress to the existing private retirement system and correctly ruled that ERISA's vesting standards were not intended suddenly to abrogate, without a word to that effect in the statute or its lengthy legislative history, the pre-ERISA approval of integration with the workers' compensation program in determining private retirement income.

A. The Language of the Statute does not Support Appellants' Claim of Forfeiture of a Right.

Effective on or after January 1, 1976,[8] ERISA Section 203(a) and IRC Section 411(a) require private retirement plans to include a provision that upon an employee's satis-

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8. For plans in existence on January 1, 1974, ERISA's minimum vesting standards are first effective for plan years beginning on or after January 1, 1976. ERISA Section 211(b)(2), 29 U.S.C. §1061(b)(2); ERISA Section 1017(b), III Leg. Hist. 4939.

faction of certain age and service criteria, his "right" to retirement benefits is "nonforfeitable". Appellants and petitioners state that this means that private plans may no longer integrate with workers' compensation in determining plan benefits. This is not supported by the language of the statute.

Nonforfeitable is a defined term in ERISA. When modifying the term "right", as in ERISA Section 203(a), it means:

> a *claim* obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. (Emphasis added.)[9]

Therefore, at least as it is used in ERISA Section 203(a) and IRC Section 411(a), nonforfeitable is solely a vesting concept. To qualify for this nonforfeitable claim, certain factual requirements, or conditions precedent, must be satisfied which may not be more stringent than those stated in ERISA Section 203(a) and IRC Section 411(a). Until those tests are met, the employee may only hope to be eligible for retirement income under the plan.

Once the tests are met, however, the right is perfected. Nothing remains to be done to fix the right. And because the right is "nonforfeitable" under the statute, it may not later be extinguished. The employee may not be disqualified from that claim by the occurrence or nonoccurrence of later events. In *Nachman Corporation v. Pension Benefit Guaranty Corporation,* 446 U.S. 359 (1980), Justice Stevens described the term "nonforfeitable" as defined in ERISA as follows:

> [T]he principal subject of the definition is the word "claim"; it is the claim to the benefit, rather

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9. ERISA Section 3(19), U.S.C. §1002(19).

> than the benefit itself, that must be "unconditional" and "legally enforceable against the plan." . . .
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> . . . [T]he term "forfeiture" normally connotes a total loss in consequence of some event rather than a limit on the value of a person's rights. . . . It is therefore surely consistent with the statutory definition of "nonforfeitable" to view it as describing the right to a pension rather than a limit on the amount he may collect.

Id., 371-72.

However, to require that a right to pension be nonforfeitable says nothing of what the pension will be. Right is an abstract term. It is the "legal consequence" which results from certain established facts. Holmes, The Common Law, 214 (1881). A nonforfeitable right is not a right to receive any particular income amount. In each case, the income benefit to which the nonforfeitable right attaches is the benefit defined in and determined under the terms of the particular private plan. On this the statute is clear. The term "nonforfeitable" is defined as "a claim . . . to that part of an *immediate or deferred benefit under a pension plan*. . . ." ERISA Section 3(19), 29 U.S.C. §1002(19) (emphasis added). Likewise "normal retirement benefit", to which appellants and petitioners here assert a nonforfeitable claim under ERISA, is defined as "the greater of the *early retirement benefit under the plan*, or the *benefit under the plan commencing at* normal retirement age." ERISA Section 3(22), 29 U.S.C. §1002(22) (emphasis added).

ERISA sets no minimum income amounts. With certain base parameters,[10] Congress left for the parties to address

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10. For example, plans may not "backload" benefit accruals—that is, provide for accrual of benefits under the plan only during the last few years of employment, if any, before normal retirement age. ERISA there-

and resolve the question of how and in what amount income benefits will be provided under the private plan. Under the Raybestos and General Motors plans, the agreed plan benefit is an *integrated* benefit; it is an amount which includes integration with income amounts also paid during retirement under the workers' compensation program.

On their face the vesting standards of ERISA do not prohibit integration with statutory income programs in defining plan benefits. Nor do the minimum vesting standards differentiate among various statutory benefit integration practices, approving some, disapproving others. The vesting standards simply do not address this subject in any fashion. To conclude otherwise ignores the distinction in the statute between the retirement claim (which vests) and the income amount determined under the particular plan.[11] Thus, it is irrelevant whether the plan integrates with

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fore provides certain alternative minimum "rate" tests (the "133 ⅓%" test, the "3%" test, or the "fractional" test) which serve to spread benefit accrual over an employee's entire active career. See ERISA Sections 204(b)(1)(A), (B) and (C), 29 U.S.C. §§1054(b)(1)(A), (B) and (C); IRC Sections 411(b)(1)(A), (B) and (C), 26 U.S.C. §§411(b)(1)(A), (B) and (C). The accrual formula also may not reduce benefits for active employees on account of increasing age or service. See ERISA Section 204(b)(1)(G), 29 U.S.C. §1054(b)(1)(G); IRC Section 411(b)(1)(G), 26 U.S.C. §411(b)(1)(G). ERISA also imposes a requirement that plan participants be permitted to elect a survivor option so that on the participant's death his beneficiary continues to receive plan income benefits. See ERISA Section 205, 29 U.S.C. §1055; IRC Section 401(a)(11), 26 U.S.C. §401(a)(11).

11. The cases cited by appellants as general support for their position (Appellants' Brief, 12-14) each concern cancellation of the participant's claim. See *Riley v. MEBA Pension Trust*, 570 F.2d 406 (2d Cir. 1977) *on remand*, 452 F. Supp. 117 (S.D.N.Y. 1978), *aff'd*, 586 F.2d 968 (2d Cir. 1978); *Winer v. Edison Brothers Stores Pension Plan*, 593 F.2d 307 (8th Cir. 1979); *Amory v. Boyden Associates, Inc.*, 434 F. Supp. 671 (S.D.N.Y. 1976). As Justice Stevens stated in *Nachman Corporation*, above, 446 U.S. 359, 371, "it is the claim to the benefit, rather than the benefit itself, that must be 'unconditional' and 'legally enforceable against the plan.' "

social security, railroad retirement, workers' compensation or other statutory income benefits. The claim to the employer financed, integrated benefit assured by the private plan is not forfeited or extinguished. The integration in determining benefits only reduces the income amount paid from the plan fund (by, in this case, an amount equal to any income amounts provided under the workers' compensation program), as agreed by the parties.

There are, however, certain specific minimum requirements in ERISA on statutory benefit integration. These are set forth in ERISA Section 206(b) ("Other Provisions Relating to Form and Payment of Benefits"), 29 U.S.C. §1056(b), and its tax counterpart, IRC Section 401(a)(15), 26 U.S.C. §401(a)(15). These benefit integration provisions were enacted as part of ERISA, simultaneously with, although separate from, the vesting standards. See III Leg. Hist. 4836, 4871, 4945.

ERISA Section 206(b) provides:

> If—
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> (1) a participant or beneficiary is receiving benefits under a pension plan, or
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> (2) a participant is separated from the service and has nonforfeitable rights to benefits,
>
> a plan *may not* decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of this Act or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation. (Emphasis added.)[12]

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12. IRC Section 401(a)(15) contains an identical restriction, except that it omits any direct reference to the railroad retirement program.

This provision is a codification of the pre-ERISA restriction on qualified plans under the antidiscrimination rules of tax law, as well as the extension of this restriction for participants separated from employment and not yet receiving plan benefits.[13]

Although Congress codified this pre-ERISA restriction on statutory benefit integration, it did not otherwise restrict private plans from integrating with statutory income programs in defining plan benefits. Neither ERISA Section 206(b) nor its tax counterpart, IRC Section 401(a)(15), prohibits plans from continuing to integrate with workers' compensation income payments also financed by the plan sponsor in determining private retirement income. Additional restrictions on statutory benefit integration were considered by Congress, but rejected pending further study.[14]

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13. See H. R. Rep. 93-807, 93d Cong., 2d Sess., 29 (1974), II Leg. Hist. 3115, 3149:

> Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. This bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. . . .
>
> These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized.

14. See discussion under Part B, *post*, page 26 and n.27.

Appellants bring to the Court's attention (Appellants' Brief, 19 n.15) Congress' recent consideration of an amendment to the statutory benefit

The structure of the statutory benefit integration provisions of ERISA provides valuable insight into what ERISA does and does not do concerning integration. Considered in a vacuum, ERISA Section 206(b) and IRC Section 401(a)(15) are without substantive meaning—those provisions do not affirmatively *authorize* any statutory benefit integration, but only *restrict* it in a specific respect.[15] These sections draw their significance only in relation to the statutory benefit integration framework which had developed under the pre-ERISA antidiscrimination rules for tax qualified plans. This antecedent benefit integration scheme is the focal point. ERISA Section 206(b) and IRC Section 401(a)(15) acknowledge that antecedent scheme and codify an existing restriction (with, possibly, additional restrictions in future years). Private plan integration with employer financed income benefits under the workers' compensation program was consistently approved for tax qualified plans prior to ERISA (see Part B, *post*), and nowhere in the statute did Congress revoke that approval.

The language of the statute, then, offers no basis to invalidate, and thus substantially to increase, the income

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integration restrictions of ERISA Section 206(b) which would now also restrict plans from integrating with the workers' compensation program (the very issue raised here under the separate vesting standards). See Section 237 of the ERISA Improvements Act of 1978 (S 3017), 124 Cong. Rec. S 6581 (May 1, 1978); Section 126(a)(3) of the ERISA Improvements Act of 1979 (S 209), 125 Cong. Rec. S 557 (January 24, 1979). That amendment, which was sponsored in 1978 and 1979 by Senators Javits and Williams, would operate *prospectively* only.

15. Appellants and petitioners are wrong in asserting that ERISA Section 206(b) and IRC Section 401(a)(15) affirmatively and specifically authorize certain statutory benefit integration. Those provisions only codify a specific, existing restriction on this comprehensive and intricate pension area which had developed under the antidiscrimination rules of pre-ERISA tax law.

amount which the parties agreed would be paid under these particular private plans. ERISA Section 203(a) and IRC Section 411(a) operate only to establish the nonforfeitability of the claim. The vesting standards do not withdraw the authority to integrate with employer financed benefits provided under the workers' compensation program or any other statutory income program in defining plan benefits. Were this not the case, the specific restriction on integration codified in ERISA Section 206(b) and IRC Section 401(a)(15) would be superfluous.

ERISA separately addresses vesting and statutory benefit integration, and, while these two pension concepts come together to produce the private plan benefit, they do not overlap or conflict. Only the income amount determined under the plan is reduced; the claim to the integrated benefit assured by the private plan is not forfeited.

B. Congress did not Change the Pre-ERISA Rules on Statutory Benefit Integration Which Approved Workers' Compensation Integration.

Integration with the workers' compensation program in defining private plan benefits was approved by the Internal Revenue Service prior to ERISA. Nowhere in the statute or its legislative history did Congress revoke that approval.[16]

Congress did not act without a frame of reference. During its lengthy consideration of ERISA, Congress focused on what was already there; it meticulously studied the development of the private retirement system under

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16. In addition, in that pre-ERISA statutory scheme, integration with workers' compensation did not extinguish a participant's nonforfeitable retirement claim. See pages 28-29, *post*.

pre-ERISA tax law.[17] Particularly in the areas of vesting and statutory benefit integration, the existing tax rules served as the predicate upon which Congress added the new restrictions of ERISA.

For example, in House Report 93-807, 93d Cong., 2d Sess., 8 (1974), II Leg. Hist. 3115, 3128, accompanying H. R. 12855, which in the vesting and statutory benefit integration areas is almost identical to the structure and language of ERISA as finally enacted (see II Leg. Hist. 2924, 2934, 3003-04), the Ways and Means Committee stated:

> Essentially, your committee's bill represents a significant improvement in the tax treatment now applicable with respect to qualified retirement plans. Your committee regards the present legislation as part of an evolutionary process which keeps this basic framework but which builds on it new provisions which experience indicates are necessary for the proper functioning of these plans.

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17. See, *e.g.*, S. Rep. 93-127, 93d Cong., 1st Sess., 11 (1973), I Leg. Hist. 587, 597:

> The Subcommittee on Labor, pursuant to Senate Resolution 235, 92nd Congress, March 6, 1972, and prior resolutions from the 91st Congress, has conducted a comprehensive and exhaustive study of the private pension plan system in the United States, with particular emphasis upon the impact which such plans have upon the workers covered. The Subcommittee's implementation of the Senate resolutions has been a methodical collection and analysis of vital statistics and pertinent detailed data from individual and group cases reflecting the internal administration and operations of private pension and welfare plans. Invaluable data was furnished by 1,493 selected pension plans in response to a comprehensive questionnaire prepared by the Subcommittee in the spring of 1970.

We note in this regard that many of this country's largest pension plans (*e.g.*, the General Motors plan, the Steelworker plans, the Raybestos plan) have included a workers' compensation offset in defining plan benefits.

Prior to the enactment of ERISA, the antidiscrimination rules of tax law comprised the major component for qualification of private retirement plans for favorable tax treatment. IRC Section 401(a) provided then, and continues to provide now in substantially identical form:[18]

> *Requirements for Qualification.*—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section —
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> • • •
>
> (4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, . . . or highly compensated employees.
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> (5) A classification shall *not* be considered discriminatory within the meaning of paragraph (3)(B) or (4) merely because . . . the . . . benefits . . . differ

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18. IRC Section 401(a)(5) was reenacted by Congress as part of ERISA with two changes, neither of which is pertinent here: *first*, a technical change, striking the phrase "paragraph (3)(B) or (4)" and inserting in lieu thereof "paragraph 4 or section 410(b) (without regard to paragraph (1)(A) thereof)," see ERISA Section 1016(a)(2)(B), III Leg. Hist. 4936; *and second*, a substantive change, adding to the end of IRC Section 401(a)(5) requirements for determining compliance with the antidiscrimination rules by "two or more plans of an employer . . . considered as a single plan," see ERISA Section 1012(b), III Leg. Hist. 4920.

Congress did not state or otherwise evidence that, upon such reenactment, it meant to have IRC Section 401(a)(5) applied differently by the Internal Revenue Service than it had been applied over the 30 years since its original enactment. Congress indicated just the contrary. See pages 25-26, *post*.

because of any retirement benefits created under State or Federal law. . . . (Emphasis added.)

This requirement was added to the Internal Revenue Code in 1942 and represented the first time that a restriction had been imposed on tax qualified plans prohibiting discrimination in favor of officers, shareholders or highly compensated employees.[19] The "saving" language of IRC Section 401(a)(5) permitting qualified plans to determine benefits differently among participants "because of any retirement benefits created under State or Federal law" was included in order to continue to allow "plans that supplement the social security program to qualify" for favorable tax treatment. H. R. Rep. 2333, 77th Cong., 1st Sess. (1942), 1942-2 Cum. Bull. 372, 450.[20]

In 1943 the Treasury Department promulgated Treasury Reg. §19.165(a)(4)-1 (1939 Code), T.D. 5278, 1943 Cum. Bull. 484-85. That Regulation discussed qualified

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19. Section 162 of the Revenue Act of 1942, P.L. 753, 56 Stat. 798, amending Section 165(a) of the Internal Revenue Code of 1939, 26 U.S.C. §165(a) (later changed to Section 401(a) of the 1954 Code).

20. Also mentioned in that House Report is integration with the railroad retirement program in defining private plan income benefits (see the reference in that Report to the "Carriers Taxing Act of 1937", 50 Stat. 435, 26 U.S.C. §1500, *et seq.* (1939 Code), under which the age, disability and survivor income benefits of the railroad retirement program were funded). H.R. Rep. 2333, 77th Cong., 1st Sess. (1942), 1942-2 Cum. Bull. 372, 450. See also, S. Rep. 1631, 77th Cong., 2d Sess. (1942), 1942-2 Cum. Bull. 504, 606: "A new paragraph (5) has been inserted in order to mention in the law itself some of the acceptable provisions found in plans supplementary to the Social Security Act. . . . The acceptable provisions mentioned in the law are not intended to be exclusive. . . ."

Private plan integration with income benefits provided under the social security or railroad retirement program does not result in discrimination in favor of higher paid employees because all plan participants are entitled to the prescribed, employer financed income level assured by the private plan, whether entirely from private plan fund or in tandem from the plan fund and these other, statutory income sources.

plan integration under the new antidiscrimination provisions as follows:

> *Discrimination as to Contributions or Benefits.*—
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> • • •
>
> A plan . . . in which the contributions or benefits differ because of any retirement benefit created under State or Federal law, will not be considered discriminatory because of such . . . difference, provided the total benefits resulting under the plan and under such law establish an integrated and correlated retirement system satisfying the tests of section 165(a).

The integrated retirement system saved from antidiscrimination includes income paid on account of disability. The system is geared to a wage-centered, industrial society and traditionally has provided income benefits to participants upon the occurrence of any one of three contingencies which actually, or presumptively, impair the normal flow of wages: reaching a stated age, incurring disability, or surviving the wage-earner. On the happening of one or more of these contingencies, the system responds predictably and a particular, defined level of periodic income is provided.

Thus, in the private sector, through use of tax incentives, Congress has fostered the growth of private employer sponsored retirement plans which provide periodic income benefits to participants who attain a certain stated age or who incur a disability, or to their survivors. These periodic income benefits may originate entirely from the fund of the private plan or, under the antidiscrimination rules, be defined and paid from the private plan fund in tandem with income benefits from other employer financed sources.[21]

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21. See Treasury Reg. §1.401-1(b)(1)(i), 26 C.F.R. §1.401-1(b)(1)(i), which specifically authorizes tax qualified retirement plans to provide income benefits based on age, disability or survivorship. Notably, the first employer plans in this country provided periodic income benefits solely on the basis of disability. Only later did private plans begin also to provide periodic benefits based on age. *See generally* Lubove, The Struggle for Social Security, 10-18 (Harv. Univ. Press 1968).

The most recognized statutory income support program for wage-earners is that existing under Title II of the Social Security Act ("Federal Old-Age, Survivors, and Disability Insurance Benefits"), 42 U.S.C. §401, *et seq.* This comprehensive national retirement program, as its title suggests, similarly provides income benefits (commonly referred to as "OASDI benefits") when covered workers reach a stated age or become disabled, or to their survivors or dependents. The formula for determining benefits under Title II is the same for benefits based on disability as for benefits based on age. The income level is determined by applying the statutory benefit formula to the average wages of the individual over a period of years, and, unlike welfare assistance, the income benefits are paid without proof of need.

The railroad retirement program (as enacted in 1935 and amended by the Railroad Retirement Act of 1937, and as amended by the Railroad Retirement Act of 1974, P.L.93-445, 88 Stat. 1305, 45 U.S.C. §231, *et seq.*[22]) is also a comprehensive retirement program which provides income benefits to individuals who have reached various stated ages, or who in connection with their work have become disabled from their regular work, or who have become disabled from any regular work. 45 U.S.C. §231a (a)(1). See also the civil service retirement program at 5 U.S.C. §8331, *et seq.*

The unifying concept in these private and statutory programs is employer financed income maintenance, whether the particular contingency setting the benefits in motion is age, disability, or survivorship. Thus, under

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22. A major reason for restructuring the Railroad Retirement Act in 1974 was to eliminate the "windfall" which resulted where income benefits were paid under both the railroad retirement program and the social security program, based on credit under each program. See S. Rep. 93-1163, 93d Cong., 2d Sess. (1974), *reprinted in* 3 [1974] U.S. Code Cong. & Admin. News 5702, 5738. The elimination of this dual income benefit was recently approved by this Court in *United States Railroad Retirement Board v. Fritz*, 49 U.S.L.W. 4035 (December 9, 1980).

the social security or railroad retirement program, a worker might leave his job and satisfy the statutory test for benefits based on both age and disability. Notwithstanding the occurrence of both these contingencies, each individually qualifying that person for benefits, he is entitled only to one income benefit under the statutory program. Similarly, disability benefits under the social security and railroad retirement program terminate at age 65, not because Congess believed that no one over age 65 has incurred a disability requiring income support, but because the uniform benefits payable at age 65 thereafter provide the specified income. The same is true under private retirement plans. A private plan typically provides benefits based on age or disability. Although a participant might qualify for benefits on the basis of both age and disability, he receives one income benefit, the same as his counterpart who qualifies only for income benefits based on age. Dual benefits are not provided. The focus is on the income objective, not the cause of eligibility. As Dean Larson stated in describing the statutory income scheme, "[it] is designed to restore to the worker a portion, such as one-half to two-thirds, of wages lost due to three major causes of wage-loss: physical disability, economic unemployment, and old-age. The crucial operative fact is that of the wage loss; the cause of the wage loss merely dictates the category of legislation applicable."[23]

State workers' compensation is one additional branch of this employer financed, statutory income scheme. Work-

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23. 4 Larson, The Law of Workmen's Compensation §97.10, at 18-9 (1980 ed.).

This interplay of income benefits is similarly recognized by the Internal Revenue Service in its benefit integration rules which have traditionally permitted, for example, "offset" plans to integrate plan disability benefits with age benefits payable under the social security program. See, *e.g.*, Revenue Ruling 62-152, 1962-2 Cum. Bull. 126, 127 ("After normal retirement age, when old-age benefits under the Social Security Act become payable, the offset of disability benefits may be that provided by paragraph 8 of Revenue Ruling 61-75.").

ers' compensation programs provide economic security against the disability risk. The primary objective is to replace some determinable portion of income which actually or presumptively has been, or will be in the future, impaired by disability. Eligibility for these periodic income benefits is established by proof of a disability that is work-connected. Causation, scope of employment, and the employer's fault or blameworthiness are not at issue. Payments are entirely employer financed and universally computed based on a percentage, generally two-thirds, of the individual's pre-disability wages. In addition to these periodic income benefits, the workers' compensation program also provides "service" benefits. The employer generally is required to pay all medical expenses incurred by the individual in connection with the disability, and it has been estimated that payment of these medical expenses constitutes approximately one-third of the total outlay under the program. (Only the periodic income benefits paid during retirement, not the medical expenses, are integrated with the income benefits provided under the private plan.)[24]

The ERISA definition of "normal retirement benefit" also carries forward this interplay of income benefits. Normal retirement benefit is defined as the benefit payable under the plan at normal retirement age, whether characterized in the plan document as an "age" or "disability" income benefit. See ERISA Section 3(22), 29 U.S.C. §1002(22). (Appellants ignore this by quoting only portions of the normal retirement benefit definition, Appellants' Brief, 31.)

The federal government engages in this same offsetting of income benefits, regardless of triggering cause. For example, under the railroad retirement program, an individual's statutory "supplemental annuity" is reduced by the amount of any supplemental retirement income (whatever the cause of eligibility) that the individual also receives for that month under any other supplemental plan. 45 U.S.C. §231a(h)(2). Of course, the *claim* under the social security program is not forfeited by reason of this integration.

24. For a detailed analysis of the objectives of the workers' compensation program, *see generally* Compendium on Workmen's Compensation, National Commission on State Workmen's Compensation Laws, "Theories and Objectives of Workmen's Compensation", 21-26 (Gov. Printing Office 1973); Larson, *Basic Concepts and Objectives of Workmen's Com-*

In Revenue Ruling 68-243, 1968-1 Cum. Bull. 157, the Internal Revenue Service formally approved private plan integration with income benefits payable under the workers' compensation program. That Revenue Ruling provides that "benefits payable under a workmen's compensation law . . . are acceptable as an offset against benefits payable under [a] qualified pension plan" and that such offset does not cause a violation of the antidiscrimination rules.

Revenue Ruling 68-243 was later incorporated by the Internal Revenue Service in the comprehensive Guides for Qualification of Pension, Profit-Sharing and Stock Bonus Plans published in Revenue Ruling 69-421, 1969-2 Cum. Bull. 59. In Part 4 ("Requirements As To Coverage"), subpart (j) ("Integration") of those Plan Qualification Guides, the Internal Revenue Service stated:

> *Integration With Benefits Provided Under Other Public Programs—*
>
> Benefits provided under a pension, annuity, profit-sharing, or stock bonus plan may be integrated with those provided under a state or Federal program that, like the social security program, requires employer contributions and makes benefits available to the general public. Thus, benefits payable under a state work-

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pensation, reprinted in I Supplemental Studies for the National Commission on State Workmen's Compensation, 31-39 (Gov. Printing Office 1973); Riesenfeld, *Forty Years of American Workmen's Compensation,* 35 Minn. L. Rev. 525 (1951). See also, chapter 1, volume 1 (1978 ed.) of Dean Larson's comprehensive treatise on this subject, The Law of Workmen's Compensation. *Cf. Katz v. Township of Howell,* 67 N.J. 51, 63, 355 A.2d 14, 20 (1975).

Congress itself continues to recognize workers' compensation as one aspect of the general income support scheme, requiring at 42 U.S.C. §424a that disability income benefits under the Social Security Act are to be reduced on account of the concurrent receipt of state workers' compensation benefits.

> men's compensation law . . . may be an acceptable offset against benefits payable under a qualified plan.

Id., 72.

This same approval of workers' compensation integration in determining private retirement income also was included by the Internal Revenue Service in its updated, February, 1972 publication of the Guides for Qualification of Pension, Profit-Sharing and Stock Bonus Plans, IRS Pub. 778 (2-72).[25]

In enacting ERISA, Congress first carefully studied the development of qualified plans under these antidiscrimination rules of the tax law. Indeed, it used the Guides for Plan Qualification in framing parts of the new legislation. See, *e.g.*, S. Rep. 93-383, 93d Cong., 1st Sess., 94 (1973), I Leg. Hist. 1069, 1162. Except where Congress specifically provided, the antidiscrimination rules were not changed by ERISA. The Conference Committee Report is precise:

> Under the conference substitute the rules of the House bill are adopted with respect to the relationship of the minimum vesting standards of the bill to the antidiscrimination rules of present law (sec. 401 (a)(4) of the Internal Revenue Code). In general, a plan which meets the vesting requirements provided in this substitute is not to be considered as discriminatory, insofar as its vesting provisions are concerned, unless there is a pattern of abuse under the plan (such as the firing of employees before their accrued benefits vest) or there has been (or there is reason to believe that there will be) an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders or who are highly compensated.

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25. *Reprinted in* No. 351 BNA Tax Management Portfolio, B-1401, 1415.

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Moreover, the conferees intend that the antidiscrimination rules of present law are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. (Emphasis added.)[26]

Although Congress examined the benefit integration practices which had developed under the antidiscrimination rules, it enacted only the specific restriction on statutory benefit integration which is set forth in ERISA Section 206(b) and IRC Section 401(a)(15). Other than the codification of that existing restriction, approved statutory benefit integration survived. Congress deferred consideration of additional legislation in this area pending further study of the scheme.[27]

Existing case law also had approved workers' compensation integration in determining private retirement income. See, *e.g.*, *Renshaw v. United States Pipe & Foundry Co.*, 30 N.J. 458, 153 A.2d 673 (1959); *Parsons v. Granite City Steel Company*, 41 Ill. App. 2d 396, 190 N.E.2d 644 (1963).

26. Conf. Rep. 93-1280, 93d Cong., 2d Sess., 276-77 (1974), III Leg. Hist. 4277, 4543-44.

27. See Supplemental Views of Hon. James C. Corman and Hon. Sam Gibbons on H.R. 12855, H.R. Rep. 93-807, 93d Cong., 2d Sess., 168, 171-72 (1974), II Leg. Hist. 3288, 3291-92:

> The [House Ways and Means] committee did not take action on the thorny issue of "integration," but instead postponed further consideration of the problems of fairness which are involved until social security issues are taken up later in the year. It cannot be stressed too strongly that remedial action is needed in this area.
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> • • •
>
> . . . [I]t is time that Congress stopped letting the Internal Revenue Service regulate "integration" and made a thorough investigation of the problem. We look forward to early action by the Ways and Means Committee on this.

Certainly, after the close study by Congress of the existing pension rules for qualified plans and its reenactment of IRC Section 401(a)(5) without relevant change, Congress' failure to invalidate workers' compensation integration is persuasive authority that this approved benefit integration remains permissible and not revoked in whole or in part by ERISA's general requirements on vesting. *Helvering v. Winmill,* 305 U.S. 79, 83 (1938).

Congress, however, was equally concerned with the cost impact on plans should integration with employer financed statutory benefits be prohibited. In discussing integration with the social security program, the House Ways and Means Committee noted that:

> [Y]our committee is very much aware that many present plans are fully or partly integrated [with the social security program] and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth [of] or perhaps even eliminated private retirement plans.
>
> In view of the serious issues involved in the integration of private plans with the social security system, your committee believes that it is desirable to postpone action on this issue pending further study of this problem.

H.R. Rep. 93-807, 93d Cong., 2d Sess., 69 (1974), II Leg. Hist. 3115, 3189. And because of this same concern with increased employer costs, Congress chose to delete from the bill initially reported by the Conference Committee a provision which would have temporarily restricted increases in the level of integration due to increases in social security benefit levels occurring after December 31, 1971 (see Section 1021(g) of the Conference Committee bill, III Leg. Hist. 4405-06). In explaining why that temporary freeze was removed from the Conference Committee bill (by H. Con. Res. 609, 93d Cong., 2d Sess., Section 17, (1974), III Leg. Hist. 4722, 4727), Senator Williams stated:

> We have been told that this [temporary freeze on integration] will greatly increase the costs of private pension plans, something that I am sure none of the Senators would like to see occur.

III Leg Hist. 4732.

Moreover, under pre-ERISA tax law, integration in defining private plan benefits was never considered to violate a participant's nonforfeitable pension right. The requirement that a pension claim be nonforfeitable upon the occurrence of certain events did not first arise in ERISA. Coexisting with the development of statutory benefit integration (including workers' compensation integration) under the antidiscrimination rules of IRC Section 401(a)(5) were the nonforfeitability requirements of IRC Section 401(a)(7). IRC Section 401(a)(7) was a statutory vesting requirement, enacted in 1962, which provided:

> A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, . . . are nonforfeitable.[28]

The language and structure of IRC Section 401(a)(7) obviously served as the model for the additional vesting rules of ERISA. The test for a "nonforfeitable" claim under IRC Section 401(a)(7) also was in substance the same as that under ERISA. A claim was treated as nonforfeitable only if "there [was] no contingency under the plan which [could] cause the employee to lose his rights" to the plan benefit. Treasury Reg. §1.402(b)-1(a)(2)(i), T.D. 6203, 1956-2 Cum. Bull. 245.[29] *Cf. Pollnow v. Commissioner of Internal Revenue,* 35 T.C. 715 (1961). Workers' compensation integration, however, never con-

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28. P.L. 87-792, 76 Stat. 809. IRC Section 401(a)(7) was reenacted under ERISA as IRC Section 411(d)(3), 26 U.S.C. §411(d)(3).

29. See Treasury Reg. §1.401-6(a)(1), T.D. 6675, 1963-2 Cum. Bull. 165.

flicted with the nonforfeitable rights requirement of IRC Section 401(a)(7). Integration and nonforfeitability were distinct and independently regulated pension concepts, one representing permissible, nondiscriminatory benefit formulation, the other referring to the vested quality of a participant's retirement claim. If, in enacting ERISA, Congress had intended to extend the reach of vesting to restrict such approved benefit integration, it would have said so.

C. Treasury Reg. §1.411(a)-4(a), Which was Promulgated after ERISA, Approves Workers' Compensation Integration in Determining Private Retirement Income.

The Third Circuit concluded below that private plan integration with income amounts paid to participants during retirement under the workers' compensation program did not violate ERISA's minimum vesting standards. In so holding, the court sustained as valid Treasury Reg. §1.411(a)-4(a), 26 C.F.R. §1.411(a)-4(a), T.D. 7501, 1977-2 Cum. Bull. 133, 144.

Treasury Reg. §1.411(a)-4(a) addresses the precise issue presented here: it states that in determining private retirement income under a plan, integration with benefits provided under state or federal law does not violate the vesting rules of ERISA. The Regulation provides:

> [N]onforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits.

Treasury Reg. §1.411(a)-4(a) was promulgated by the Treasury Department pursuant to its statutory authority to implement the new vesting and other standards of

ERISA (see ERISA Sections 3001-04, 29 U.S.C. §§1201-04[30]) as well as under its explicit authority from Congress to promulgate "all needful rules and regulations for the enforcement" of the Internal Revenue Code, of which the minimum vesting and other pension standards are a part (see IRC Section 7805(a), 26 U.S.C. §7805(a)).

Treasury Reg. §1.411(a)-4(a) reflects the considerable expertise of the Treasury Department in this complex area[31] and harmonizes the intricate ERISA provisions. Whether labelled "legislative" (as the Third Circuit characterizes it) or otherwise, Treasury Regulation §1.411(a)-4(a) may not be invalidated unless the Court finds it to be plainly unreasonable or wholly inconsistent with the governing statute, which it is not. *Bingler v. Johnson,* 394 U.S. 741, 749-51 (1969); *United States v. Correll,* 389 U.S. 299, 305-07 (1967); *Helvering v. Winmill,* 305 U.S. 79, 83 (1938).

Congress has entrusted to the Treasury Department the administration of the federal pension laws. Both prior to ERISA, and at all times since the enactment of ERISA, the Treasury Department has affirmatively permitted qualified private plans to integrate with income benefits under

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30. With certain narrow exceptions (*e.g.*, what constitutes a "year of service"), Congress gave the Treasury Department exclusive authority to promulgate the minimum vesting regulations. These regulations apply equally to ERISA Section 203(a) and to IRC Section 411(a). See Conf. Rep. 93-1280, 93d Cong., 2d Sess., 359 (1974), III Leg. Hist. 4277, 4626 ("Under the conference substitute the Department of the Treasury is to prescribe the necessary regulations under the general provisions relating to participation, vesting, and funding except where specific authority is given to the Secretary of Labor to prescribe the regulations."). See also, Reorganization Plan No. 4 of 1978, *reprinted in* 7 [1978] U.S. Code Cong. & Admin. News 9790, 9814-18 ("Treasury will have statutory authority for minimum standards. The new plan puts all responsibility for funding, participation, and vesting of benefit rights in the Department of Treasury.").

31. See, *e.g.*, H.R. Rep. 93-807, 93d Cong., 2d Sess., 31 (1974), II Leg. Hist. 3115, 3151:

the workers' compensation program, and these integrated plans are financed on this basis.[32] To reject the statutory authorization of the Treasury Department in this area would unexpectedly, and substantially, increase the income amounts which the parties themselves decided would be paid under these private plans. Reasonable and bargained-for expectations, consistently approved by the regulatory agency responsible for day-to-day administration of these laws, would be forsaken.

Workers' compensation integration was approved under tax law prior to ERISA and nowhere in ERISA did Congress revoke that approval. Treasury Reg. §1.411(a)-4(a) carries forward that pre-ERISA approval and is a reasonable implementation of the statute.

> Your committee believes that primary reliance on the tax laws represents the best means for enforcing the new improved standards imposed by the bill. Historically, the substantive requirements regarding nondiscrimination, which are designed to insure that pension plans will benefit the rank and file of employees, have been enforced through the tax laws and administered by the Internal Revenue Service. . . .
>
> Your committee believes that the Internal Revenue Service has generally done an efficient job in administering the pension provisions of the Internal Revenue Code. The very extensive experience that the Service has acquired in its many years of dealing with these related pension matters will undoubtedly be of great assistance to it in administering the new requirements imposed by the committee bill.

32. Financing of defined benefit plans is determined on the basis of the retirement income defined to be paid under the particular plan (here, an integrated income level). It is not, as appellants and petitioners urge, determined on an individual-by-individual basis, with a certain percentage of each employee's weekly or monthly wages diverted to a pension fund for deferred payment. "Only in the most abstract sense may it be said that an employee 'exchanges' some portion of his labor for these possible benefits." *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979).

D. The Decision of the Sixth Circuit Ignores the Language of the Statute and its Antecedent History.

The Sixth Circuit, in a 2 to 1 decision (Judge Engel dissenting), reached a result on this same issue opposite from that of the Third Circuit. See *Utility Workers v. Consumers Power Company,* No. 78-1402 (January 6, 1981), *petition for rehearing en banc pending.* Judge Peck, writing the majority opinion in *Utility Workers,* ruled that ERISA's vesting standards must be expanded beyond the actual language of the statute to prohibit workers' compensation integration in determining private retirement income. He concluded that while integration with OASDI benefits under the social security program survived ERISA's vesting rules, integration with workers' compensation did not.

In arriving at this conclusion, Judge Peck failed to discern the critical statutory distinction between the retirement *right,* which under ERISA Section 203(a) and IRC Section 411(a) must vest upon satisfaction of certain stated requirements, and the income amount determined under the plan (here, an integrated income amount).

Judge Peck expressed concern that undue attention to the statutory language opened the floodgate to new plan formulations purposely designed to evade ERISA's vesting standards. That concern plainly is unwarranted here. Integration with employer financed, statutory income benefits has been an accepted, and tax regulated, part of private retirement plans for many years. Unlike the hypothetical plan provisions which concerned Judge Peck, and which apparently moved him to disregard the language of the statute, workers' compensation integration commonly existed in plans prior to ERISA. Revenue Ruling 68-243 formally approved workers' compensation integration under the antidiscrimination rules of IRC Section 401(a)(5) and that Revenue Ruling was twice republished during Congress' consideration of the early ERISA

bills. At the same time, IRC Section 401(a)(5) was reenacted as part of ERISA, without relevant change, and without a word from Congress that prevailing benefit integration approved under IRC Section 401(a)(5) was to be abruptly abandoned.

Under circumstances such as these "caution must temper judicial creativity." *Ford Motor Credit Co. v. Milhollin,* 444 U.S. 555, 565 (1980). Although ignored by Judge Peck in *Utility Workers,* vesting and statutory benefit integration are two distinct pension concepts which do not conflict under ERISA. By establishing minimum standards as to when an employee's claim must vest, Congress did not thereby withdraw from plans the approval to integrate with income amounts paid during retirement under the workers' compensation program. The Third Circuit's decision below recognized this basic distinction as well as the antecedent history of workers' compensation integration; the majority decision of the Sixth Circuit in *Utility Workers* did not. The plan benefit here is an integrated benefit, and the claim to that integrated benefit assured by the private plan is not forfeited.

II. NEW JERSEY MAY NOT REGULATE THE TERMS AND CONDITIONS OF PRIVATE RETIREMENT PLANS COVERED BY ERISA.

The Third Circuit correctly stated in its opinion below that insofar as N.J. Stat. 34:15-29, as amended by Chapter 156 of the New Jersey Laws of 1977 ("Chapter 156"), prohibits private retirement plans covered by ERISA from integrating with income benefits provided under the workers' compensation program, the state statute is preempted by ERISA.

Chapter 156 provides:

> The right of [workers'] compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments.

Appellants and petitioners assert that Chapter 156, which is part of New Jersey's Workers Compensation Law, was enacted under the state's broad police power, and that it is not concerned with pension plans *qua* pension plans but merely with workers' compensation benefits. Under these circumstances, they assert, Chapter 156 must be allowed to stand absent clear congressional intent to preempt.

Admittedly, the federal/state regulatory balance may not be disturbed unintentionally by Congress or unnecessarily by the courts. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). It is equally clear, however, that "when Congress has 'unmistakenly . . . ordained' . . . that its enactments alone are to regulate a part of commerce, state laws regulating that aspect of commerce must fall. This result is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Id.* ERISA, the federal statute involved here, in clear language mandates that federal law shall supersede any and all state laws that relate to private pension plans.

Again, the starting point is the language of the statute itself. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring). ERISA Section 514(a), 29 U.S.C. §1144(a),[33] provides with certain specifically enumerated exceptions, none of which are applicable here,[34] that state laws are superseded not only where such

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33. The full text of ERISA Section 514 is set forth at pages 5a-6a of the Appendix to this Brief, *post*.

34. ERISA preemption is limited only by ERISA Section 514(b)(2)(A), 29 U.S.C. §1144(b)(2)(A), which permits state regulation of insurance, banking and securities; by ERISA Section 514(b)(4),

laws directly regulate the terms and conditions of employee benefit plans but

> insofar as they may now or hereafter *relate to* any employee benefit plan. . . . (Emphasis added.)

This preemption language is shaped further by the manner in which Congress defined the terms "State law" and "State". ERISA Section 514(c), 29 U.S.C. §1144(c), provides:

> For purposes of this section:
>
> (1) The term "State law" includes *all* laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable to the District of Columbia shall be treated as a State law rather than a law of the United States.
>
> (2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, *which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.* (Emphasis added.)

Congress carefully chose this broad preemption language and intended preemption of state law to be as expansive as the language of ERISA Section 514 dictates.[35]

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29 U.S.C. §1144(b)(4), which permits application of a state's general criminal laws; and by ERISA Section 514(d), 29 U.S.C. §1144(d), which is a savings clause for other federal statutes, rules and regulations. Appellants and petitioners do not assert that any enumerated exception to ERISA preemption applies here.

35. As the Third Circuit noted below, the legislative history of ERISA Section 514 has been exhaustively analyzed and discussed by the courts, *see, e.g., Wadsworth v. Whaland*, 562 F.2d 70, 76-77 (1st Cir. 1977),

ERISA Section 514 was drafted by the Conference Committee and is more sweeping than the preemption provision contained in either the House or Senate bills. The version of the bill sent by the Senate to the Conference Committee, H.R. 2, Section 699, 93d Cong., 2d Sess., 573-75 (March 4, 1974), would have preempted state laws to the extent that such laws related to the "subject matters" regulated by that bill or by the Welfare and Pension Plans Disclosure Act. See III Leg. Hist. 3599, 3820-22. The version of the bill passed by the House, H.R. 2, Section 514, 93d Cong., 2d Sess., 160-62 (February 28, 1974), actually enumerated the specific areas to be preempted by federal law: reporting and disclosure, fiduciary responsibilities, nonforfeitability, funding, portability and plan termination insurance. See III Leg. Hist. 3898, 4057-59.[36]

These preemption provisions were rejected and Congress chose instead to apply preemption in its broadest and

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cert. denied, 435 U.S. 980 (1978); *National Carriers' Conference Comm. v. Heffernan*, 454 F. Supp. 914, 915-17 (D. Conn. 1978); *Hewlett-Packard Co. v. Barnes*, 425 F. Supp. 1294, 1297-1300 (N.D.Cal. 1977), *aff'd per curiam*, 571 F.2d 502 (9th Cir. 1978), *cert. denied*, 439 U.S. 831 (1978), and fully supports the Third Circuit's application of the preemption clause here.

36. The Nixon Administration submitted a third preemption clause to the House and Senate conferees on H.R. 2. See III Leg. Hist. 5047, 5145-47. The Administration's proposal also specifically listed the precise areas of state law to be preempted and was intended to tighten the bill's preemption clause. In recommending enactment of its proposal, the Administration explained that:

> The preemption provisions under the House bill are extremely vague, while the Senate bill is too broad since it preempts all state laws covering areas regulated under the Act, which includes tax aspects of retirement plans. Accordingly, the Administration has submitted clarifying language.

III Leg. Hist. 5146.

most comprehensive sense. The Conference Committee Report provides:

> *Preemption of State Laws (Sec. 514 of the bill)*
>
> Under the substitute, the provisions of title I are to supersede *all* State laws that *relate to* any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce.

Conf. Rep. 93-1280, 93d Cong., 2d Sess., 383, III Leg. Hist. 4277, 4650 (emphasis added).

Senator Williams, Chairman of the Senate Committee on Labor and Public Welfare, in presenting the Conference Committee bill to the Senate, explained the broad preemption of state law under the statute as follows:

> It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law.

III Leg. Hist. 4745-46. Also speaking on behalf of the Conference Committee bill, Senator Javits similarly explained what was intended by this reinforced preemption clause:

> Both House and Senate bills provided for preemption of State law, but — with one major exception appearing in the House bill — defined the perimeters of preemption in relation to the areas regulated by

> the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.
>
> Although the desirability of further regulation — at either the State or Federal level — undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required — but for certain exceptions — the displacement of State action in the field of private employee benefit programs. The conferees — recognizing the dimensions of such a policy — also agreed to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made.

III Leg. Hist. 4770-71. Finally, Representative Dent, another of the major sponsors of ERISA, also emphasized the broad scope of ERISA's preemption provision in his statement to the House in support of the Conference Committee bill:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. . . .

> The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof — including any professional society or association operating under code of law — which would affect any employee benefit plan as described in section 4(a) and not exempt under section 4(b).

III Leg. Hist. 4670-71.

The state law at issue here, Chapter 156, not only relates to employee benefit plans but directly regulates the method by which private plans determine private retirement income: it specifically prohibits private pension plans from integrating with any income amounts the participant also is paid during retirement under the workers' compensation program. Moreover, by regulating the determination of retirement income under these private plans, Chapter 156 also regulates the financing of the plan by the plan sponsor. If Chapter 156 is allowed to stand, not only will private plans be required to exceed the income levels decided upon by the parties and stated in the plan document, but also the plan sponsor will be required to incur the cost of this substantially increased income to be paid under the private plan. This obviously is a matter for Congress, not New Jersey, to weigh.

In finding this state statute preempted by ERISA, the Third Circuit correctly concluded below that:

> Our reading of ERISA satisfies us that ERISA *does* preempt N.J. Stat. §34:15-29 (Supp. 1979). Thus, we cannot agree with the district courts that have concluded otherwise. The primary purpose of the statute,

> and its direct effect, is to prohibit pension plans from offsetting Workmen's Compensation benefits against pension retirement benefits. It simply cannot be said that this statute does not concern pension plans *qua* pension plans . . . , or that its effect on such plans is merely collateral. . . . In our opinion, the *only* purpose and effect of the statute is to set forth an additional statutory requirement for pension plans. . . .

Joint Appendix of Petitioners and Respondent, 116a.

The fact that Chapter 156 is structured as part of the New Jersey Workers' Compensation Law is of no import in concluding that the state statute "relates to" employee benefit plans within the meaning of ERISA Section 514(a). ERISA explicitly preempts *any and all* state laws which *directly or indirectly* relate to private employee benefit plans (although it specifically saves from preemption, for example, a state's generally applicable criminal laws, ERISA Section 514(b)(4), 29 U.S.C. §1144(b)(4)). It is not the label given a statute but its effect which governs, and Chapter 156 is specific legislation the effect of which is to regulate how private plans determine private retirement income. It therefore "relates to" these employee benefit plans within the meaning of ERISA Section 514(a) and is preempted.

CONCLUSION

For all of the reasons set forth above, appellees Raybestos-Manhattan, Inc. and the Raybestos-Manhattan, Inc. Employee Retirement Plan respectfully submit that the decision of the Third Circuit below should be affirmed in all respects.

Respectfully submitted,

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APPENDIX

ERISA SECTION 203(a)

ERISA Section 203(a) ("Minimum vesting standards") provides as follows:

> (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.
>
> (1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.
>
> (2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).
>
> (A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.
>
> (B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60

Appendix

Years of service:	Nonforfeitable percentage
12	70
13	80
14	90
15 or more	100

(C)(i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50
6	47	60
7	49	70
8	51	80
9	53	90
10	55	100

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

Appendix

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 302(c)(8).

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit de-

rived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 204(c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 204(c)(2)(C) (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before the date of the enactment of this Act, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of this Act. The Secretary of the

Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

ERISA SECTION 514

ERISA Section 514 ("Other laws") provides as follows:

(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(a) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance

companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.